IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 598 OF 2003

IN

SUMMARY SUIT NO. 925 Of 2003

Pidilite Industries Ltd. .. Plaintiffs

versus

Banglore Paints Ltd. .. Defendants

...

Mr.S. Jagtiani i/b Desai & Diwanji for the plaintiff.

Mr.S. Purohit i/b H.K. Sudhakar for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 30th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. At the hearing of the Summons for Judgement, the learned counsel for the plaintiff gives up the claim for interest prior to the date of institution of the suit.

3. This Summons for Judgement is taken out by the plaintiff in a suit for recovery of the price of the goods sold supplied and delivered.

4. Despite service of Summons for Judgement, the defendant has not filed any application for leave to defend nor filed an affidavit in reply. The plaintiff is therefore entitled to a decree under Order 37 Rule 3(6) of the Code of Civil Procedure. The learned counsel for the plaintiff hands in documents along with a list. The documents are taken on record and collectively marked Exhibit-A.

5. Perused the plaint and the documents filed on record. I have also heard the learned counsel for the plaintiff and heard the learned counsel for the defendant with leave of the Court.

6. The plaintiff sold supplied and delivered to the defendant goods and sent invoices. Office copies of the invoices are produced on record. By various letters, the plaintiff demanded the payment of the balance outstanding. By the letter dated 27th June 2000 (page 16 of the compilation of documents). The

defendant stated that the outstanding balance to the plaintiff as per its books of accounts was Rs.2,86,406.74 and requested the plaintiff to send a copy of the statement of the plaintiffs books of account did not tally with it. By the further letter dated 28th September 2001, the defendant promised to make payment of the outstanding balance but only prayed for time on the ground of sad state of paint industry. Thereafter, the defendant did not make the payment.

7. In the absence of any affidavit in reply, statements made by the plaintiff in the plaint are believed. Furthermore, the said statements are corroborated by documents filed on record. In the circumstances, plaintiff is entitled to a decree under Order 37 Rule 3(6) of the Code of Civil Procedure. Hence, I pass the following order:-

8. Summons for Judgement is made partly absolute and the suit of the plaintiff is decreed as follows:-

"The defendant shall pay to the plaintiff a sum of Rs.2,56,291.93 together with interest thereon at 9% p.a. from the date of the suit till payment and all costs of the suit."

D.G. KARNIK, J